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GP 1644

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Lynch et al.	Docket No.:	2836-B
Serial No.:	09/154,903	Art Unit:	1644
Filed:	17 September 1998	Examiner:	P. Gambel

For: DENDRITIC CELL STIMULATORY FACTOR

#6 Election/A
Section 12
06
99

Assistant Commissioner for Patents
Washington, D.C. 20231

CERTIFICATE OF MAILING

I hereby certify that this correspondence, along with any paper referred to as being attached or enclosed, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date indicated below.

BY Nancy M. Kerstoon

DATE November 22, 1999

ELECTION OF CLAIMS, ELECTION OF SPECIES

and

AMENDMENT OF CLAIMS

This paper is in response to the office action mailed 20 October 1999. This paper is timely filed on 22 November 1999, 20 November 1999 being a Saturday.

ELECTION OF CLAIMS AND REQUEST FOR RECONSIDERATION

The Examiner required election of one of the following groups of claims:

Group I, Claims 1-7 and 14, drawn to a method of augmenting an immune response,

Group II, Claims 8 and 9, drawn to a dendritic cell populations,

Group III, Claims 10 and 11, drawn to antigen-expressing dendritic cells, and

Group IV, Claims 12 and 13, drawn to a method of preparing antigen-presenting dendritic cells.

Applicants provisionally elect the claims of Group II WITH TRAVERSE. Applicants traverse the requirement on the grounds that the requirement is in error. In particular, as

discussed more fully below, the claims of Groups II, III, and IV (claims 8-13) should be examined in the same application.

The claims of Group II (claims 8-9) and Group III (claims 10-11) should be examined in the same application. Claims 8-9 are directed to dendritic cell populations and claims 10-11 are directed to antigen-expressing dendritic cell populations. In both cases the cell populations are produced by contacting hematopoietic stem or progenitor cells with flt3-ligand. Applicants do not understand why the Examiner alleges that these claims would "require non-coextensive searches" (Office Action, Paragraph 4). The "antigen" in claims 10 and 11 is not a structural element that would be separately searched; it is, instead *any antigen*. A single search would, therefore, identify the art relevant to both dendritic cells that are produced by contacting hematopoietic stem or progenitor cells with flt3-ligand and antigen-expressing dendritic cells that are produced by contacting hematopoietic stem or progenitor cells with flt3-ligand. For at least the reasons discussed above, Applicants submit that the examination of claims 8-11 together would not be a serious burden on the Examiner.

The claims of Group III (claims 10 and 11) and Group IV (claims 12-13) should be examined in the same application. Claims 12-13 are related to claims 10-11 as process and product by process. In both cases the dendritic cell population is produced by contacting hematopoietic stem or progenitor cells with flt3-ligand. Applicants do not understand why the Examiner alleges that "the antigen presenting dendritic cells can be made by . . . procedures that do not require flt3-ligand" (Office Action, Paragraph 5), because claims 10 and 11 explicitly recite that the claimed cell populations are produced by contacting hematopoietic stem or progenitor cells *with flt3-ligand*. Furthermore, the examination of claims 8-11 together would not be a serious burden on the Examiner.

Finally, in paragraph 6 of the Office Action, the Examiner alleged that "the search for any group from groups I-IV is not required for any other group from Groups I-IV." This is not correct. Each of the claims in groups II, III, and IV recites that hematopoietic stem or progenitor cells are contacted with flt3-ligand. Any search required for the claims of group II would, therefore, necessarily be required for the search of claims of Groups III and IV.

In summary, Applicants respectfully submit that the claims of Groups II, III, and IV are dependent and related and that the examination of claims 8-13 together would not be a serious burden on the Examiner. In view of this, Applicants respectfully request reconsideration of the

requirement for restriction. In particular, Applicants request that the requirement be modified and that the claims of Groups II, III, and IV (claims 8-13) be examined together in this application.

ELECTION OF SPECIES AND REQUEST FOR RECONSIDERATION

The Examiner made the following three election of species requirements.

(1) The Examiner required election of:

A) 4-1BB (assumed to mean 4-1-BB ligand),

B) 4-1BB-specific antibody,

C) CD40 binding protein as it reads on CD40 ligand,

D) CD40 binding protein as it reads on CD40-specific antibodies, or

E) combinations thereof.

(2) The Examiner also required election of:

A) GM-CSF,

B) IL-4,

C) TNF-α,

D) IL-3,

E) c-kit ligand, or

F) fusions [of] GM-CSF and IL-3.

(3) The Examiner also required election of one of three species of Group I.

As a preliminary matter, Applicants note that the third election requirement (3) is moot since it applies only to the claims of Group I (claims 1-7 and 14). The claims of Group I have not been elected and are, in fact, cancelled in the amendment submitted herewith.

In order to comply with the second election requirement (2), Applicants provisionally elect GM-CSF, WITH TRAVERSE. Claims 8-13 are readable on the elected species.

In order to comply with the first election requirement (1), Applicants provisionally elect CD40 binding protein as it reads on CD40 ligand, WITH TRAVERSE. Claims 8-13 are readable on the elected species.

Applicants traverse the second and first election requirements on the grounds that the Examiner has not adequately explained why such election is necessary. Even if it were true that the designated "patentably distinct species" have different structures and different modes of